UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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JAZLYN COLON,

                    Plaintiff,

          -against-   22 **CIVIL** 433 (JMF)

                                                                       JUDGMENT

OLD REPUBLIC INSURANCE COMPANY et al.,

                    Defendants.
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          It is hereby **ORDERED, ADJUDGED AND DECREED:** That for the reasons

stated in the Court's Memorandum Opinion and Order dated April 25, 2023, and the Court's

Memorandum Opinion and Order dated May 12, 2023, in light of Defendants' supplemental

submission, summary judgment must be and is GRANTED as to Colon's remaining claim. As

the Court previously observed, the Supplemental Policy explicitly provides that, "[i]f there is

Uninsured and/or Underinsured Motorists Coverage available to anyone [in the car] which

provides at least the Limit of Insurance for Uninsured and/or Underinsured Motorists Coverage

[that this policy provides], then this [Supplemental Policy] shall not apply. ECF No. 40-8, at 35

(emphasis added). Defendants' supplemental declaration confirms that, at the time of the

accident, Colons Uber driver held a primary insurance policy that provided $25,000/$50,000

uninsured motorist coverage the same limits as the Supplemental Policy. See ECF No. 51-1. Per

its plain terms, therefore, the Supplemental Policy does "not apply" and Colon is not entitled to

benefits. See also, e.g., Ali v. Fed. Ins. Co., 719 F.3d 83, 90 (2d Cir. 2013) ("[T]he very nature of

excess insurance coverage is such that a predetermined amount of underlying primary coverage

must be paid before the excess coverage is activated." (internal quotation marks omitted)); Weiss

v. Tri-State Consumer Ins. Co., 951 N.Y.S.2d 191, 194 (2d Dept 2012) (noting that supplemental

insurance does not function as a stand-alone policy to fully compensate [an] insured[] for [her] injuries), abrogated on other grounds by Gov't Emps. Ins. Co. v. Tramontozzi Sherlock, 32 N.Y.S.3d 635 (2d Dep't 2016). Judgment is entered in favor of Defendants; accordingly, the case is closed.

Dated: New York, New York

       May 12, 2023

RUBY J. KRAJICK

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Clerk of Court

BY: K. mango

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Deputy Clerk